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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC20-80
Regulation title	Solid Waste Management Regulations
Action title	Amendment 6
Document preparation date	July 20, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Solid Waste Management Regulations, 9 VAC 20-80, require that all facilities have control programs for unauthorized wastes (9 VAC 20-80-113) and that certain types of facilities have routine monitoring, observation and inspections of incoming waste (9 VAC 20-80-250 C and 9 VAC 20-80-370 D). These requirements have been adopted to prevent a facility from receiving and managing wastes that are prohibited or not authorized by the department. Amendment 6 is intended to improve these requirements for all solid waste management facilities and reduce the risk that unauthorized waste will be treated, stored, or disposed of at a solid waste management facility. By making these changes to the requirements, the board will reduce the risk to human health and the environment presented by the facilities in their operation. These changes will also reduce the economic liability the waste management activities may engender for the owner, operator and host community by providing for a safer and better controlled operation.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General

Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Waste Management Act authorizes the Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of solid waste without a permit from the director of the Department of Environmental Quality (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E).

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The website address for the full text is:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC100100001400000000000>.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Several problem wastes, such as hazardous waste, polychlorinated biphenyls (PCBs), asbestos, radioactive wastes, heavy metals, medical wastes, pesticides, ordnance and flammables are subject to other state and federal programs and regulations because they pose a greater risk to human health and the environment. Virginia has prohibited these types of wastes from solid waste management facilities. All facilities must have control programs for unauthorized wastes. Current regulations only require routine monitoring observation, and inspections of incoming waste loads at the gate of sanitary landfills and incinerators. The current provisions have not been adequate to prevent Virginia solid waste management facilities from accepting unauthorized waste. In addition, information reported on the waste loads that are rejected based upon the current level of screening raise concern about the content of loads that are not screened. Changes to these provisions would make the programs more protective of human health and the environment by reducing the risk a solid waste management facility will receive unauthorized waste.

Improper disposal threatens the operation and safety at solid waste management facilities, and, if handled by facilities not designed to manage them, these problem waste pose a threat to human health and the environment.

In this amendment, the regulations for routine monitoring, observation, and inspections of incoming waste loads will be modified. Inspection requirements may be increased to bring greater control over problem wastes and other changes will be considered. The goal is to strengthen those programs elements that reduce the risk of entry of problem waste into solid waste management facilities and to encourage proper disposal, waste minimization, reuse, reclamation and recycling.

Among the issues to be addressed through the public participation process are several questions. In what ways can the control of unauthorized waste programs be improved? What other problem wastes need to be prohibited from solid waste facilities? What levels of inspections are appropriate for various types of solid waste management facilities and operating practices? What additional standards are needed for segregating and holding problem wastes once they are detected? To what degree should rejection of loads and return to the generators be used, and how can it be accomplished with least risk? What steps can be taken or used to ensure generators of waste can be identified or held accountable for

improperly disposing of their waste? What other steps can be taken to reduce the risk that unauthorized waste will be received at a solid waste management facility?

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The program elements for control of unauthorized wastes will be consolidated into one section (9 VAC 20-80-113) and cross referenced as necessary throughout the rest of the regulations. Definitions will be included to clarify what wastes are unauthorized and other important terms. All solid waste management facilities will be required to have a program for routine monitoring, observation and inspection at the entry gates, including routine visual and random spot inspections. The listing of unauthorized waste will be more clearly delineated in order to strengthen the prohibition against unauthorized waste. The percentage of random inspections may be increased. This includes provisions for solid waste management facilities handling waste generated in jurisdictions with different and less stringent standards to minimize the risk of unauthorized waste being accepted. Details of the unauthorized waste control plan will be specified so as to reduce the risk that unauthorized wastes will be accepted, to increase safe management of problem waste while on-site, to improve inspector training, and to improve record keeping. Requirements will be added to have industrial waste and remediation waste loads pre-approved before transport begins. Provision will be made for certification of loads that are inspected at transfer stations when shipping to a management facility under the same owner (for example, if a county operates both facilities and the load is not disturbed in shipment, the transfer station would inspect the waste and certify the load to the landfill). Closer documentation of proper management and follow-up of loads determined to have problem waste will be specified. Solid waste management facilities will be required to annually review requirements of jurisdictions where waste was generated for consistency with Virginia laws and regulations concerning acceptable wastes to be managed at the facility. When unauthorized waste is received, solid waste management facilities will be required to notify generators and transporters that unauthorized waste is not to be sent to the facility.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

One alternative is to keep the current regulations as they are; however, the current regulations are lacking additional provisions that would minimize the risk posed by a facility receiving unauthorized waste. If other alternatives to intended elements of the action are discovered during the participatory process, they will be considered and developed as appropriate. The process will involve the use of an advisory committee that will include technical members of the regulated community and the public in an effort to elicit ideas for maximizing cost-effective techniques.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated

in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the regulation on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Robert G. Wickline, P.E., Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009, (804)698-4213, fax (804) 698-4237, rgwickline@deg.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period. Specifically, persons who want to be on the ad hoc advisory group should notify Robert G. Wickline in writing by 5:00 p.m., the last day of the comment period and provide their name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. Any persons who want to be in the advisory group are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The only impact on the family and family stability is indirect. Those living near a solid waste management facility will benefit by reduced risk from improper management of unauthorized waste and problem chemicals in their neighborhood.